Supreme Court, U.S.
FILED
OCT 9 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-216

In The

Supreme Court of the United States

October Term, 1987

THE CITY OF FONTANA, a Municipal Corporation; ROBERT MEJIA; LARRY SMITH; NATHAN A. SIMON; CHARLES A. KOEHLER; BEN ABERNATHY; BILL FREEMAN; DONALD F. DAY; WILLIAM KRAGNESS; JACK RATELLE; JOHN M. RAGER; and KATHY WILSON,

Petitioners,

vs.

SONJA RENEE SMITH, as Administratrix of the Estate of RUFUS A. SMITH, SR., Deceased, as Guardian Ad Litem for the Minor Children of the Deceased, and Individually; RUFUS ANTHONY SMITH, JR., Individually; MARCUS SMITH, a Minor; NETRA SMITH, a Minor; ANTHONY SMITH, a Minor; JARREN SMITH, a Minor; SHERRI SMITH, a Minor; ARKILLIUS SMITH, a Minor; and TASHIEKA SMITH, a Minor,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

The decision rendered by the United States District Court of Appeals for the Ninth Circuit which forms the basis for this Petition for Writ of Certiorari, may not be as broadly construed as suggested by the questions presented by petitioners. Respondents: SONJA RENEE SMITH, as Administratrix of the Estate of RUFUS A. SMITH, SR., Deceased, as Guardian Ad Litem for the Minor Children of the Deceased, and Individually; RUFUS ANTHONY SMITH, JR., Individually; MARCUS SMITH, a Minor; NETRA SMITH, a Minor; ANTHONY SMITH, a Minor; JARREN SMITH, a Minor; SHERRI SMITH, a Minor; ARKILLIUS SMITH, a Minor; and TASHIEKA SMITH, a Minor, therefore, respectfully submit that the following questions more accurately state the questions before the Supreme Court:

A. Whether the children's interest in the continued companionship and society of their father is a cognizable liberty interest under the due process clause?

B. Whether minor and adult children have a constitutionally protected liberty interest in the companionship and society of a parent?

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SHIEKA SMITH, Minors, respectfully request that this Court deny the Petition for Writ of Certiorari seeking review of the Order and Amended Opinion of the United States District Court of Appeals for the Ninth Circuit entered in this proceeding on May 5, 1987.

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PROVISIONS OF LAW INVOLVED

This case primarily involves the proper application of the provisions of *42 U.S.C. Section 1983*, which states, in pertinent part:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

Pertinent provisions of the Constitution and other laws involved in this case are:

1. Amendment IV of the United States Constitution as it applies to the States:

> "The right of the people to be secure in their persons . . . against unreasonable . . . seizures, shall not be violated . . ."

2. Article XIV, Section 1, of the United States Constitution:

> ". . . nor shall any State deprive any person of life, liberty or property, without due process of law . . ."

3. *42 U.S.C. Section 1981:*

> "All persons within the jurisdiction of the United States shall have the same right in every state . . . to the full and equal benefit of all laws and proceedings for the security of persons . . . as is enjoyed by white citizens . . ."

4. *42 U.S.C. Section 1988:*

> "The jurisdiction in civil . . . matters conferred on the district courts by the provisions of this Title, and of Title 'CIVIL RIGHTS,' . . . for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies . . ., the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil . . . cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause . . ."

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STATEMENT OF THE CASE

On July 1, 1982, Respondents filed a Complaint in the United States District Court for the Central District of California against petitioners, pursuant to *42 U.S.C. Sections 1981, 1983, 1985(2)(3), 1986,* and *1988,* as well as under the First, Fourth, Fifth, Eighth, and Fourteenth Amendments to the United States Constitution, in con-

nection with a police shooting which resulted in the death of RUFUS A. SMITH, SR.

On petitioner's motion, respondents' Complaint was dismissed in its entirety for failure to state a claim, on the ground that relief under *Section 1983* was barred by *Parratt v. Taylor*, 451 U.S. 527 (1981), and *Rutledge v. Arizona Board of Regents*, 660 F.2d 1345 (9th Cir. 1981). Following respondents' appeal of the dismissal to the Ninth Circuit Court of Appeals, the Appellate Court reversed the decision of the lower court, holding that *Parratt* and its progeny are inapplicable to civil rights actions asserting substantive as opposed to purely procedural due process violations, and that respondents clearly had alleged substantive due process violations in their Complaint.

In making its decision to reverse the lower court ruling, the Appellate Court relied upon recent decisions of the U.S. Supreme Court in *Daniels v. Williams*, 106 S.Ct. 662 (1986); *Haygood v. Younger*, 769 F.2d 1350 (9th Cir. 1985) (en banc); *Piatt v. MacDougall*, 773 F.2d 1032 (9th Cir. 1985) (en banc); and *Bretz v. Kelman*, 773 F.2d 1026 (9th Cir. 1985) (en banc). The Appellate Court's Opinion was filed on January 6, 1987.

Petitioners later filed a Petition for Rehearing en banc. The Petition for Rehearing was denied, and the suggestion for a rehearing en banc was rejected. The Appellate Court's Amended Opinion was filed on May 5, 1987, and a Second Amended Opinion, which merely deleted a footnote, was filed on July 7, 1987.

In its Amended Opinion, the Court ruled, inter alia, that the adult and minor children of the deceased could assert personal substantive due process claims related to

the death of their father in that they had a cognizable liberty interest in, and had been deprived of, their father's society and companionship without due process of law. Petitioners are now petitioning this Court for a Writ of Certiorari to review the decision of the Ninth Circuit Court of Appeals as it relates to the children's substantive due process claims.

REASONS FOR DENYING THE WRIT

Petitioners assert in their petition that they are "seeking to delimit the extension of **vicarious** Constitutional protection provided to family members, other than parents, of a family member who died as a result of governmental action." (Petition, at p.6, emphasis added). The Appellate Court's ruling, however, clearly articulates that adult and minor children have a **personal**, constitutionally protected right to the continued society and companionship of a parent, without unwarranted state interference. In short, not only does the father have the right not to be deprived of his **life** without due process, the children have an equally protected **liberty** interest in the continuation of the parental relationship.

A.

THE APPELLATE COURT WAS CORRECT IN HOLDING THAT THE CONSTITUTIONAL INTEREST IN FAMILIAL COMPANIONSHIP AND SOCIETY LOGICALLY EXTENDS TO PROTECT CHILDREN FROM UNWARRANTED STATE INTERFERENCE WITH THEIR RELATIONSHIPS WITH THEIR PARENTS.

The Amended Opinion of the Appellate Court, on pages B-32 through B-36 of Petitioners' Appendix, adopted herein, clearly states the Court's rationale for holding that children have a constitutionally protected liberty interest in a continued child-parent relationship, free from unwarranted state interference, even though previous Supreme Court decisions have addressed only the issue of the protections accorded to the parent-child relationship. The Court concluded that:

> "The companionship and nurturing interests of parent and child in maintaining a tight familial bond are reciprocal, and we see no reason to accord less constitutional value to the child-parent relationship than we accord to the parent-child relationship" (Petitioners' Appendix, pages B-35/36).

The Appellate Court leaves no doubt that the type of familial relationships to be reached by its decision concerns only parents and children. No decision is made with respect to the relationships between siblings, or aunts, uncles, cousins, etc. Petitioners' espoused fear of "the potential flood of spurious 'coattail' litigation brought by family members vicariously asserting violations of their constitutional rights as a result of governmental action taken against another family member", then, appears to be groundless.

B.

THE APPELLATE COURT WAS CORRECT IN ITS FINDING THAT MINOR AND ADULT CHILDREN HAVE A COGNIZABLE LIBERTY INTEREST IN THEIR RELATIONSHIP WITH THEIR FATHER, AND IN ITS HOLDING THAT THE SAME USE OF EXCESSIVE POLICE FORCE WHICH GIVES RISE TO THE FATHER'S SUBSTANTIVE DUE PROCESS CLAIM BASED ON HIS LOSS OF LIFE, ALSO GIVES THE CHILDREN A SUBSTANTIVE DUE PROCESS CLAIM BASED ON THEIR LOSS OF HIS COMPANIONSHIP.

The question before this Court is not merely whether the death of one family member as a result of governmental action deprives another family member of a cognizable constitutional interest, but rather, whether a parent's deprivation of life by unwarranted state action simultaneously results in the deprivation of the liberty interest of the parent's adult and minor children in the society and companionship of the parent.

The Appellate Court held that such tandem rights do exist between parents and children and that those rights are constitutionally protected.

In rendering its decision, the Appellate Court found ample and compelling support in past U.S. Supreme Court cases, as well as in the legislative history of *42 U.S.C. Section 1983*'s precursor, the *Ku Klux Klan Act of 1871.*

In addition to the case law and legislative history cited by the Ninth Circuit Appellate Court, at least one State Supreme Court, the Supreme Court of Colorado, has held that children of a deceased may assert the violation of a constitutional liberty interest in the continued life of the

deceased as part of an action against those who, under color of state law, deprive others of rights protected under the Federal Constitution or federal law [See *Espinoza v. O'Dell* (1981) 633 P.2d 455].

Although petitioners allege in their brief that the Appellate Courts have broadened the protection of parent-child relationships "to include constitutional deprivations suffered by other family members, based on a number of different rationales, to protect a variety of substantive interests," they fail to cite any particular cases to demonstrate the existence of any conflict on that issue. The Ninth Circuit Court of Appeals addressed only the nature of the interests protected by the Constitution with respect to parents and children, and the circumstances under which their unwarranted deprivation can rise to the level of a substantive due process violation.

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CONCLUSION

The Ninth Circuit Court of Appeals was required to render a well-reasoned decision on the various issues before it at the time of respondents' appeal. It did so.

The issues decided by the Court which relate to this petition dealt with a limited class of cases predicated on the sanctity of the parent-child and child-parent relationship. In reversing the lower court's decision to dismiss the due process claims of the decedent's adult and minor children, the Appellate Court made the logical extension of previous U.S. Supreme Court cases, which accorded protection to parents in maintaining the companionship and

upbringing of their children, to provide similar protection to children in preserving the society and companionship of their parents.

No similar connection can be drawn between other types of family relationships as a result of this Appellate Court's decision, no confusion among the lower district courts is imminent, and no federal question has been decided by the Appellate Court in such a way as to conflict with applicable decisions of the U.S. Supreme Court. As such, respondents respectfully request that the Petition for Writ of Certiorari be denied.

DATED: October 9, 1987.

Respectfully submitted,

ANDRENA G. DANCER and
CHARLES B. JOHNSON,
Attorneys for Respondents

APPENDIX

Respondents: SONJA RENEE SMITH, as Administratrix of the Estate of RUFUS A. SMITH, SR., Deceased, as Guardian Ad Litem for the Minor Children of the Deceased, and Individually; RUFUS ANTHONY SMITH, JR., Individually; MARCUS SMITH, a Minor; NETRA SMITH, a Minor; ANTHONY SMITH, a Minor; JARREN SMITH, a Minor; SHERRI SMITH, a Minor; ARKILLIUS SMITH, a Minor; and TASHIEKA SMITH, a Minor, hereby adopt and, incorporate herein by reference, the Appendix for Petition for Writ of Certiorari filed by petitioners on August 3, 1987.